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12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ASIAN PACIFIC ISLANDER LEGAL
OUTREACH; CENTRAL AMERICAN
16 RESOURCE CENTER; CENTER FOR GENDER
& REFUGEE STUDIES; COMMUNITY LEGAL
17 SERVICES IN EAST PALO ALTO; DOLORES
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18 IMMIGRATION CENTER FOR WOMEN AND
CHILDREN; LAWYERS' COMMITTEE FOR
19 CIVIL RIGHTS OF THE SAN FRANCISCO
BAY AREA; LEGAL SERVICES FOR
20 CHILDREN; PANGAEA LEGAL SERVICES;
THE UNIVERSITY OF SAN FRANCISCO
21 SCHOOL OF LAW IMMIGRATION AND
DEPORTATION CLINIC,

22 Plaintiffs,

23 v.

24 U.S IMMIGRATION AND CUSTOMS
ENFORCEMENT; U.S. DEPARTMENT OF
25 HOMELAND SECURITY,

26 Defendants.

Case No. 3:17-cv-04969

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF FOR
VIOLATION OF THE FREEDOM OF
INFORMATION ACT, 5 U.S.C. § 552
et seq.**

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INTRODUCTION

1. Asian Pacific Islander Legal Outreach (“APILO”), Central American Resource Center (“CARECEN”), Center for Gender & Refugee Studies (“CGRS”), Community Legal Services in East Palo Alto (“CLSEPA”), Dolores Street Community Services (“DSCS”), Immigration Center for Women and Children (“ICWC”), Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (“LCCR”), Legal Services for Children (“LSC”), Pangea Legal Services (“Pangea”), and the University of San Francisco School of Law Immigration and Deportation Clinic (“USF”) (collectively, “Plaintiffs”) bring this action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, as amended (“FOIA”), to obtain an injunction requiring the United States Immigration and Customs Enforcement (“ICE”) and United States Department of Homeland Security (“DHS”) to respond to a FOIA request sent by Plaintiffs to ICE and DHS on July 16, 2015 (“Request”), and to promptly disclose the requested records.

2. The Request seeks records pertaining to DHS’s “Alternatives to Detention” (“ATD”) program and practices that ICE, an agency of DHS, employs to exercise supervisory authority over an individual whom ICE is seeking to remove from the United States. A true and correct copy of the Request is attached as **Exhibit A**. DHS’s and ICE’s widespread use of “Alternatives to Detention” has subjected numerous individuals, including asylum seeker families, to burdensome conditions and electronic surveillance. These impose significant hardships on individuals, including physical pain, financial costs, and humiliation. They also raise serious due process, liberty, and privacy concerns.

3. This action is necessary because DHS’s and ICE’s search for responsive documents was inadequate, and because DHS and ICE have not produced responsive documents and policies internally referenced in its response and in other reports, nor has it released records required to be created or maintained as a matter of law.

JURISDICTION

4. This Court has subject-matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-706, and 28 U.S.C. § 1331.

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VENUE

5. Venue in the Northern District of California is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiffs APILO, CARECEN, CGRS, CLSEPA, DSCS, ICWC, LCCR, LSC, Pangea, and USF have their respective and principal places of business in this district. Because a substantial part of the events or omissions giving rise to this action occurred within this district where the San Francisco Immigration Court is located, venue is also proper under 28 U.S.C. § 1391(e).

6. Assignment to the San Francisco Division is proper pursuant to Civil Local Rule 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in San Francisco where a majority of the plaintiffs each maintain their principal places of business, and where the San Francisco Immigration Court is located.

PARTIES

7. Founded in 1975, **Asian Pacific Islander Legal Outreach (APILO)** is a community-based, social justice organization serving the Asian and Pacific Islander, and other communities of the Greater Bay Area. With offices in Oakland and San Francisco, its work is focused in the areas of violence against women/family law, immigration and immigrant rights, senior law and elder abuse prevention, the rights of those with disabilities, anti-human trafficking, youth violence prevention, affordable housing preservation and tenants' rights, and other social justice issues. Its mission is to provide culturally competent and linguistically appropriate legal representation, social services, and advocacy for the most marginalized segments of the community including low-income women, seniors, recent immigrants, and youth. Its diverse staff provides holistic legal, social, and educational services in more than a dozen languages.

8. **Central American Resource Center (CARECEN)** provides full scope legal representation to women and men with immigration cases at the San Francisco Immigration Court. Many of those women and men, often recently-arrived asylum seekers, have been required to wear ankle monitors as part of the Intensive Supervision Appearance Program (ISAP). The ankle monitors have had noticeably negative effects on CARECEN's clients' lives, such as causing health problems, impeding their ability to pick up or drop off their children from school, and

1 causing them to feel like “criminals” and experience emotional trauma as a result of having to be
 2 seen wearing the device in public. Transparency with regard to ISAP would greatly benefit
 3 CARECEN’s clients regarding the cost, justification, and discovered health risks of the ISAP
 4 ankle monitors and the program in general.

5 9. The **Center for Gender & Refugee Studies (CGRS)**, housed at the University of
 6 California Hastings College of the Law, works to protect the fundamental human rights of
 7 refugees—with a focus on women and children—through litigation, scholarship, expert
 8 consultations, and the development of policy recommendations. Attorneys at the Center include
 9 authors of scholarly books and law review articles regarding asylum, experts who advise other
 10 attorneys representing asylum seekers, and practicing attorneys who represent asylum seekers
 11 throughout the United States. CGRS conducts multiple national trainings each year, including
 12 both in-person and web-based trainings, and has published comprehensive studies documenting
 13 the procedures and treatment of women and child asylum seekers in the United States. Its reports,
 14 studies, and policy briefs are made available via publication in law journals or by academic and/or
 15 trade press, via distribution to email list-serves and individuals, and/or on its public website. Each
 16 year, CGRS provides direct assistance in several hundred cases of asylum seekers, including many
 17 women and children from Mexico and Central America. Its assistance in these cases typically
 18 includes the dissemination of relevant materials compiled and/or produced by CGRS. CGRS will
 19 make widely available to the public information requested through this FOIA via its website
 20 and/or by other means discussed above.

21 10. Plaintiff **Community Legal Services in East Palo Alto (CLSEPA)** provides legal
 22 assistance to low-income individuals and families in East Palo Alto and surrounding communities.
 23 Its immigration law practice provides direct legal representation to hundreds of adults and children
 24 each year. It has played a key role in responding to the needs that have arisen in connection with
 25 the expedited dockets for unaccompanied minors and families who recently arrived in the United
 26 States and have cases pending before the San Francisco Immigration Court. Most of CLSEPA’s
 27 adult clients, who recently arrived with their children to seek asylum in the United States, are
 28 enrolled in the ISAP program. CLSEPA assists those clients in advocating for removal of the

Electronic Monitoring Device (EMD) that is part of the ISAP program, as well as for removal from the ISAP program in general. In addition to its provision of direct legal services to children and families on the expedited dockets of the San Francisco Immigration Court, CLSEPA helps staff the “Attorney of the Day” (AOD) program through the Bar Association of San Francisco, which involves having a *pro bono* attorney or team of attorneys in the courtroom for master calendar hearings. Among other tasks, AODs advise unrepresented families about the ISAP program and ways in which adults may have the EMD removed. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally disseminates information about immigration court matters for unaccompanied minors and families through community presentations and through its partnerships with the private *pro bono* bar.

11. **Dolores Street Community Services (DSCS)** provides community outreach services and *pro bono* deportation defense to low-income immigrants. DSCS is a registered non-profit organization and an active participant in the San Francisco Immigrant Legal and Education Network (“SFILEN”), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS represents numerous detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are either subject to the ISAP or ATD.

12. The **Immigration Center for Women and Children (ICWC)** is a non-profit legal organization providing affordable immigration services to underrepresented immigrants in California. ICWC strives to provide security and stability for children who are abused, abandoned or neglected and for immigrants who are victims of domestic violence, sexual assault and other violent crimes. Our office represents primarily SIJS, U Visa and VAWA applicants, a vulnerable population of women and children, who often lack the resources to easily comply with the restrictions placed on them by the ISAP program.

13. **Plaintiff Lawyers’ Committee for Civil Rights of the San Francisco Bay Area (LCCR)** is a non-profit legal services and social justice organization that works in partnership with the private *pro bono* bar to protect and advance the rights and status of people of color, low-

income communities, and immigrants and refugees through direct legal services, impact litigation, and policy advocacy. Through its *pro bono* Asylum Program, LCCR annually provides legal services to hundreds of asylum seekers, many of whom are under intensive supervision through the ATD program. LCCR supports a network of hundreds of *pro bono* attorney volunteers, providing trainings on asylum law and procedure and related immigration law topics and publishes resource manuals, practice advisories, and reports on immigration topics. LCCR often uses the results of FOIA requests in order to provide comprehensive representation to its clients and mentorship and training to its *pro bono* attorney volunteers. LCCR also disseminates information through its website, www.lccr.com, and social media. LCCR maintains its principal place of business in San Francisco, California.

14. Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. LSC's practice includes foster care, guardianship, education and immigration cases.

15. **Pangea Legal Services** is a nonprofit organization based in Northern California that provides low-cost and free legal services to immigrants and refugees at risk of deportation. In addition to direct legal services, Pangea also advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Many of Pangea's clients are either detained in ICE custody or enrolled in ATD programs. The lack of detailed information about these programs affects Pangea's ability to competently represent its clients and to advise asylum seekers in removal proceedings about their rights.

16. The **University of San Francisco School of Law Immigration and Deportation Clinic** is one of the only clinics in the nation focused on representing unaccompanied alien children in their immigration cases. It represents children from all over California, who fall within the jurisdiction of the San Francisco Immigration Court, in their asylum and special immigrant juvenile status cases. In addition to providing *pro bono* legal services to children, it also

1 represents San Francisco families who are recent arrivals in the United States and are currently in
 2 removal proceedings. USF represents numerous families who have been subject to the Intensive
 3 Supervision Appearance Program or ATD for prolonged periods of time. USF plans to
 4 share information gathered through this FOIA regarding the government's treatment of immigrants
 5 under the ISAP program with our law school community and partners so that we
 6 can properly advise our clients of the requirements under ISAP and so that we can better advocate
 7 for their physical and mental well-being.

8 17. ICE and DHS are federal agencies within the meaning of 5 U.S.C. § 552(f).
 9 Plaintiffs are informed and believe that ICE and DHS have possession, custody, or control of the
 10 requested records.

11 **FACTS**

12 18. In recent years, as conditions in countries such as El Salvador, Guatemala, and
 13 Honduras have declined and extreme violence has gone unchecked, the United States has seen a
 14 significant increase in the number of children, young adults, families, and other vulnerable
 15 individuals fleeing their home countries and seeking safety here.

16 19. A substantial number of these children and parents (primarily mothers) have had
 17 credible claims for protection under the laws of the United States. Nonetheless, as the media
 18 increasingly focused its attention on the rising numbers, the federal government has sought to stem
 19 the arrival of migrants and send a message to those who might be considering making the trip or
 20 supporting loved ones fleeing the violence and journeying to the United States.

21 20. Among the measures adopted to send a message to migrants was detention of
 22 families, the intensive monitoring of non-detained families via use of "Alternatives to Detention,"
 23 and the institution of expedited dockets to speed the adjudication and removal process for
 24 unaccompanied children and families. DHS's widespread use of "Alternatives to Detention" for
 25 individuals in removal proceedings, including vulnerable asylum seeker families, raise serious due
 26 process, liberty, and privacy concerns. Conditions include electronic surveillance in the form of
 27 ankle monitoring devices as well as onerous supervision and check-ins. These impose a range of
 28 financial, physical, emotional, and psychological costs on mothers with young children and others.

1 Individuals subject to ankle monitors have reported electric shocks, burning, discomfort,
 2 humiliation, and even hospitalization caused by the devices. Nevertheless, DHS has failed to
 3 provide uniform standards or clear justifications for its use of Alternatives to Detention to affected
 4 individuals, their attorneys, or the public.

5 21. On July 16, 2015, concerned by DHS's imposition of burdensome, invasive, and
 6 harmful conditions on asylum seeker families, Plaintiffs filed a request under the Freedom of
 7 Information Act, 5 U.S.C. § 552, seeking ICE records pertaining to the use of "Alternatives to
 8 Detention" programs. Reflecting the urgency of the subject matter involved, the request sought
 9 expedited processing by the agency.

10 22. The Request was directed to, among other DHS recipients, ice-foia@dhs.gov – the
 11 e-mail address publicly designated by DHS, to receive FOIA requests related to ICE. *See* ICE,
 12 "Submitting FOIA Request," available as of June 6, 2017 at <https://www.ice.gov/foia/request>.

13 23. The Request sought "records that were prepared, received, transmitted, collected
 14 and/or maintained by ICE and/or its components relating or referring to" the ATD program. *See*
 15 **Exhibit A**.

16 24. The Request reasonably and specifically described the records sought, which are
 17 not otherwise publically available. After defining the terms used, Plaintiffs requested 14
 18 subcategories of information, enumerated alphabetically as A-N. *See* Exh. A at 2-5. Each
 19 subcategory requested a broad range of types of records on specific topics within the jurisdiction
 20 of ICE. Six of these categories requested "policies, protocols, guidance, training materials, and
 21 communications" regarding specific topics (subcategories A-E, H), and the remaining eight
 22 subcategories requested "any and all records," "any records," "records," or "any audits, studies,
 23 reports, analysis, or examinations" relating to eight other specific topics (Items F-G, I-N). Six of
 24 the items contained a specific reference to legal memorandum, regulations, contracts, and legal
 25 decisions (Items B, F, G, H, I, J). Each item referred to current documents, or provided a specific
 26 time range of interest.

27 25. On July 30, 2015, the "ICE FOIA Office" in an unsigned email, acknowledged
 28 receipt of Plaintiffs' Request. *See* **Exhibit B**.

26. On November 18, 2015, ICE provided a final response to the FOIA request (“Response”), which is attached as **Exhibit C** (Cover letter). The response consisted of 11 items totaling 17 pages in length. Three items were memoranda, seven were email guidance provided to officers, and one was a single page taken from an unidentified source. Some of the pages had portions withheld pursuant to FOIA exemptions (b)(6) and (b)(7)(C).

27. On January 15, 2016, Plaintiffs filed an administrative appeal of the Response (“Appeal”), which is attached as **Exhibit D**. In their Appeal, Plaintiffs contend that ICE’s search was inadequate because the agency: (i) did not did not produce responsive documents and policies internally referenced in its Response; (ii) did not produce responsive documents or information referenced in other reports; and (iii) did not release records or information required to be created or maintained as a matter of law. *See* Exh. C, pp. 3-8.

28. In their Appeal, Plaintiffs enumerated unproduced information and documents referenced in ICE’s Response as well as other responsive documents that had been released to the public through other channels. Plaintiffs also provided a detailed list of records and information that were required to be produced as a matter of law, but which ICE had not released in response to the Request.

29. On March 16, 2017, ICE informed Plaintiffs of its “final response” to Plaintiffs’ Appeal and produced 308 additional pages that were responsive to Plaintiffs’ request. Nevertheless, ICE withheld portions of the 308 pages, and did not produce numerous other responsive documents that were specifically identified by ICE’s production.

30. Defendants’ continuing failure to comply with the Act deprives Plaintiffs of the ability to inform the public of a matter of exceptional public importance as well as the ability to provide crucial information about the use of “Alternatives to Detention,” which burdens families, invades their privacy, poses health risks, and causes humiliation, particularly when imposing ankle monitoring bracelets. Plaintiffs accordingly seek necessary relief from this Court.

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CLAIMS FOR RELIEF

FIRST CLAIM

Violation of FOIA for Failure to Conduct a Reasonable Search

1. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 30 above, inclusive.

2. Defendants have failed to make a reasonable effort to search for records sought by Plaintiffs' requests, and that failure violates FOIA, 5 U.S.C. 552(a)(6)(A) and corresponding regulations.

SECOND CLAIM

Improper Withholding of Agency Records in Violation of FOIA

3. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 30 above, inclusive.

4. Defendants have failed to produce the vast majority of records in response to Plaintiffs' FOIA requests.

5. Defendants' failure to produce these records violates their statutory obligation to make requested records "promptly" available to the public. 5 U.S.C. § 552(a).

WHEREFORE, Plaintiffs request that the Court award the following relief:

1. Declare that Defendant ICE violated FOIA by failing to disclose the requested records;

2. Declare that Defendant DHS violated FOIA by failing to disclose the requested records;

3. Order ICE and DHS to immediately disclose the requested records to the public and make copies immediately available to Plaintiffs, or, in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;

4. Award Plaintiffs their reasonable costs and attorneys' fees; and

5. Grant such other relief as the Court may deem just and proper.

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1 DATED: August 25, 2017

2 Respectfully submitted,

3 DAVIS WRIGHT TREMAINE LLP

4
5 By: /s/ Thomas R. Burke
6 THOMAS R. BURKE

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12 LEGAL SERVICES IN EAST PALO ALTO
13 (CLSEPA), DOLORES STREET COMMUNITY
14 SERVICES (DSCS), IMMIGRATION CENTER
15 FOR WOMEN AND CHILDREN (ICWC),
16 LAWYERS' COMMITTEE FOR CIVIL RIGHTS
17 OF THE SAN FRANCISCO BAY AREA (LCCR),
18 LEGAL SERVICES FOR CHILDREN (LSC),
19 PANGAEA LEGAL SERVICES, AND THE
20 UNIVERSITY OF SAN FRANCISCO SCHOOL OF
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